IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

Bail Appl..No. 7567 of 2007()

CRLMC.889/2007 of DISTRICT COURT, MANJERI
CP.52/2004 of J.M.F.C.,PARAPPANANGADI
(LP CASE 141/07 IN CP 52/04)
CRIME NO.31/032 OF THENHIPALAM POLICE STATION

.....

: PETITIONER/ACCUSED

SHAHUL HAMEED @ SHOUKU, S/O. MUHAMMED,
CHERUPADIKKAL KULANGATTU, EDAKKANDIPURAI HOUSE,
PALLIKKAL, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, THENHIPALAM POLICE
STATION - THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7567 of 2007

Dated this the 7th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner faces indictment in a prosecution under Section 376 I.P.C. Cognizance was taken on the basis of a final report submitted by the police after investigation. That crime in turn was registered on the basis of a private complaint filed by the defacto complainant/victim before the Magistrate, which was referred to the police by the Magistrate under Section 156(3) Cr.P.C. Investigation was completed. Final report was filed. The petitioner was not available, he having gone abroad in connection with his employment. Showing him as an absconding accused, final report was filed. Cognizance was taken by the learned Magistrate. Committal proceedings was registered. He was not available. Consequently the case against him has been transferred to the list of Long Pending Cases. The petitioner, who is employed abroad, has now come back to India. Coercive processes issued against the petitioner are chasing him. In as much as the offence punishable under Section 376 I.P.C is triable exclusively by a court of session, the petitioner alleges

that his application for regular bail may not be considered by the learned Magistrate. The petitioner has hence come to this Court for anticipatory bail. The petitioner relies on the dictum in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662] in support of his claim for anticipatory bail. The counsel prays that the petitioner may be granted anticipatory bail. The learned counsel for the petitioner submits that the nature of the allegations raised may be considered. The private complaint was filed on 21.12.02. The crux of the allegations is that 15 months prior to the filing of the complaint the petitioner had trespassed into the house of the defacto complainant/victim and had committed rape on her. She became pregnant. She gave birth to a child. The husband of the defacto complainant was employed abroad. A case is set up that there was an agreement on the part of the petitioner to marry the defacto complainant. But that was not honoured. It is on those allegations that the crime was registered and without even waiting for an opportunity to verify the version of the petitioner, final report was filed by the police showing the petitioner as an absconding accused.

2. The learned counsel for the petitioner submits that the facts scenario in this case must appeal to the Court as one eminently suitable to invoke the dictum in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662] and save the petitioner of the trauma of undeserved arrest and detention in execution of the processes issued by the court after taking cognizance.

3. The learned Public Prosecutor does not oppose the application. The learned Public Prosecutor only submits that it may be ensured that the petitioner appears before the learned Magistrate immediately and takes part in the proceedings.

4. I am satisfied, in the facts and circumstances of this case that the petitioner can be granted anticipatory bail.

5. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 15.12.2007. He shall be enlarged on regular bail on his executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall surrender his passport before the learned Magistrate;

iii) The petitioner shall, until the case against him is finally disposed of, report before the S.H.O, Thenhipalam Police Station between 5 p.m and 6 p.m on all Sundays;

iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

v) If the petitioner were arrested prior to his surrender on 15.12.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.1,00,000/- (Rupees One lakh only) without any sureties undertaking to appear before the learned Magistrate on 15.12.07.

(R.BASANT, JUDGE)

rtr/-